

Short Title: Preservation/Safekeeping Publicly-owned Docs.

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE PRESERVATION, MAINTENANCE, AND SAFEKEEPING  
OF PUBLICLY-OWNED RECORDS.

The General Assembly of North Carolina enacts:

**SECTION 1.** The General Statutes are amended by adding a new Chapter to read:

**"Chapter 132A.**

**"Preservation of Publicly-owned Records.**

**"§ 132A-1. Definitions; applicability and scope of Chapter.**

**(a) The following definitions apply in this Chapter:**

(1) Agency of North Carolina government or its subdivisions. – Every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority, or other unit of government of the State or of any county, unit, special district, or other political subdivision of government.

(2) Publicly-owned record. –

a. All public records as defined in G.S. 132-1(a); and

b. All other documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its

subdivisions, that have been excluded from the definition of “public  
record” in G.S. 132-1 by statute or other law.

Where the word “record” appears in this Chapter without another express  
modifier, “record” means a “publicly-owned record.”

(b) This Chapter governs the preservation, maintenance, and safekeeping of publicly-  
owned records. Disclosure or confidentiality of and access to records is governed by other law.  
Accordingly, nothing in this Chapter narrows, limits, or otherwise affects either the definition  
of a public record under G.S. 132-1(a) or the right to access public records under Chapter 132  
of the General Statutes.

**§ 132A-2. Custodian designated.**

Except as otherwise provided by law, the public official in charge of an office  
having publicly-owned records is the custodian of those records."

**SECTION 2.** G.S. 132-3 is recodified in Chapter 132A of the General Statutes, as  
created in Section 1 of this act, as G.S. 132A-3. As recodified by this section, G.S. 132A-3  
reads as rewritten:

**§ 132A-3. Destruction of records regulated.**

(a) Prohibition. – No public official ~~may~~shall destroy, sell, loan, or otherwise dispose  
of any ~~public~~publicly-owned record, except in accordance with G.S. 121-5 and G.S. 130A-99,  
or any other statute that authorizes or directs the disposition of publicly-owned records, without  
the consent of the Department of Natural and Cultural Resources. ~~Whoever~~Any person who  
unlawfully removes a ~~public~~publicly-owned record from the office where it is usually kept, or  
alters, defaces, ~~mutilates~~mutilates, or destroys ~~it shall be~~it is guilty of a Class 3 misdemeanor  
and upon conviction shall only be fined not less than ten dollars (\$10.00) nor more than five  
hundred dollars (\$500.00).

(b) Revenue Records. – Notwithstanding subsection (a) of this section and G.S. 121-5, when a record of the Department of Revenue has been copied in any manner, the original record may be destroyed upon the order of the Secretary of Revenue. If a record of the Department of Revenue has not been copied, the original record shall be preserved for at least three years. After three years the original record may be destroyed upon the order of the Secretary of Revenue.

(c) Employment Security Records. – Notwithstanding subsection (a) of this section and G.S. 121-5, when a record of the Division of Employment Security has been copied in any manner, the original record may be destroyed upon the order of the Division. If a record of that Division has not been copied, the original record shall be preserved for at least three years. After three years the original record may be destroyed upon the order of the Assistant Secretary of Commerce."

**SECTION 3.** G.S. 132-4 is recodified in Chapter 132A of the General Statutes, as created in Section 1 of this act, as G.S. 132A-4. As recodified by this section, G.S. 132A-4 reads as rewritten:

**"§ 132A-4. Disposition of records at end of official's term.**

Whoever has the custody of any ~~public~~publicly-owned records shall, at the expiration of ~~his~~that person's term of office, deliver to ~~his-that person's~~that person's successor, or, if there ~~be-is~~is none, to the Department of Natural and Cultural Resources, all records, books, writings, ~~letters-letters,~~and documents kept or received by ~~him-that person~~that person in the transaction of ~~his-that person's~~that person's official business; and any such person who ~~shall refuse or neglect-refuses or neglects~~refuses or neglects for the space of 10 days after request made in writing by any citizen of the State to deliver ~~as herein required~~such-publicthe publicly-owned records to the person authorized to receive them ~~shall-be-as~~required by this section is guilty of a Class 1 misdemeanor."

1           **SECTION 4.** G.S. 132-5 is recodified in Chapter 132A of the General Statutes, as  
2     created in Section 1 of this act, as G.S. 132A-5. As recodified by this section, G.S. 132A-5  
3     reads as rewritten:

4     "**§ 132A-5. Demanding custody.**

5         Whoever is entitled to the custody of ~~public~~publicly-owned records shall demand them  
6     from any person having illegal possession of them, who shall forthwith deliver ~~the same to~~  
7     ~~him~~them to the person entitled to custody. If the person who unlawfully possesses  
8     ~~public~~publicly-owned records ~~shall refuse or neglects,~~ without just ~~cause refuse or neglect~~  
9     ~~cause,~~ for 10 days after a request made in writing by any citizen of the State to deliver ~~such the~~  
10    records to their lawful custodian, ~~he shall be~~the person is guilty of a Class 1 misdemeanor."

11           **SECTION 5.** G.S. 132-5.1 is recodified in Chapter 132A of the General Statutes,  
12    as created in Section 1 of this act, as G.S. 132A-6. As recodified by this section, G.S. 132A-6  
13    reads as rewritten:

14    "**§ 132A-6. Regaining custody; civil remedies.**

15         (a) The Secretary of ~~the Department of~~ Natural and Cultural Resources or ~~his the~~  
16     ~~Secretary's~~ designated representative or any public official who is the custodian of  
17     ~~public~~publicly-owned records ~~which that~~ are in the possession of a person or agency not  
18     authorized by the custodian or by law to possess ~~such public the publicly-owned~~ records may  
19     ~~petition the superior court file a civil action against the possessor of the records~~ in the superior  
20     court in the county in which the person holding ~~such the~~ records resides or in which the  
21     materials in issue, or any part ~~thereof, of them,~~ are located for the return of ~~such public the~~  
22     records. The court may order ~~such public the~~ records to be delivered to the ~~petitioner plaintiff~~  
23     upon finding that the materials in issue are publicly-owned records and that ~~such~~  
24     ~~public these publicly-owned~~ records are in the possession of a person not authorized ~~by the~~

~~eustodian of the public records or under this Chapter, under Chapter 132 of the General~~  
~~Statutes, by their custodian, or otherwise~~ by law to possess ~~such public records; them.~~ If the  
~~order of delivery does not receive compliance, the petitioner~~ possessor of the records does not  
~~comply with the order of delivery, the plaintiff~~ may request that the court enforce ~~such the~~  
order through its contempt power and procedures.

(b) At any time after the filing of ~~the petition set out in a civil action under~~ subsection  
(a) ~~of this section~~ or contemporaneous with ~~such that~~ filing, the public official seeking the  
return of the ~~public~~publicly-owned records may by ex parte ~~petition motion~~ request the ~~judge or~~  
~~the~~ court in which the action was filed to grant one of the following provisional remedies:

(1) An order directed at the sheriff commanding ~~him the sheriff~~ to seize the  
materials ~~which that~~ are the subject of the action and deliver ~~the same them~~  
to the ~~court under the circumstances hereinafter set forth; court;~~ or

(2) A preliminary injunction preventing the sale, removal, disposal or  
destruction of or damage to ~~such public the~~ records pending a final judgment  
by the court.

(c) The ~~judge or~~ court ~~aforsaid~~ shall issue an order of seizure or grant a preliminary  
injunction under subsection (b) of this section upon receipt of an affidavit from the ~~petitioner~~  
~~plaintiff~~ which alleges that the materials at issue are ~~public~~publicly-owned records and that  
unless one of ~~said the~~ provisional remedies authorized in this section is granted, there is a  
danger that ~~such the~~ materials ~~shall may~~ be sold, secreted, removed out of the State or  
otherwise disposed of so as not to be forthcoming to answer the final judgment of the court  
respecting ~~the same; them;~~ or that ~~such property the materials~~ may be destroyed or materially  
damaged or injured if not seized or if injunctive relief is not granted.

(d) ~~The aforementioned~~ An order of seizure or preliminary injunction issued under subsection (c) of this section shall issue without notice to the ~~respondent~~ defendant and without the posting of any bond or other security by the ~~petitioner~~ plaintiff.

(e) At any time before trial of the civil action, the defendant may move to dissolve an order of seizure or a preliminary injunction issued under this section. If the motion is made within 10 days after the order of seizure has been executed or the defendant has been served with the preliminary injunction, the clerk of superior court shall set the motion for hearing within 10 business days or as soon thereafter as may be feasible. The plaintiff shall receive at least two days' notice of this expedited hearing. The defendant has the burden to show that the order should be dissolved or modified before trial."

**SECTION 6.** G.S. 132-7 is recodified in Chapter 132A of the General Statutes, as created in Section 1 of this act, as G.S. 132A-7. As recodified by this section, G.S. 132A-7 reads as rewritten:

**"§ 132A-7. Keeping records in safe places; copying or repairing; certified copies.**

Insofar as possible, custodians of ~~public~~ publicly-owned records shall keep them in fireproof safes, vaults, or rooms fitted with noncombustible materials and in ~~such an~~ such an arrangement ~~as to be that is~~ easily accessible for convenient use. All ~~public~~ publicly-owned records should be kept in the buildings in which they are ordinarily used. Record books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever any State, county, or municipal records are in need of repair, restoration, or rebinding, the head of ~~such the~~ the State agency, department, board, or commission, the board of county commissioners of ~~such the~~ the county, or the governing body of ~~such the~~ the municipality may authorize ~~that~~ the records in need of repair, restoration, or rebinding to be removed from the building or office in which ~~such the~~ the records are ordinarily kept, for the length of time required to repair, restore, or rebound

1    them. Any public official who causes a record book to be copied shall attest it and shall certify  
2    on oath that it is an accurate copy of the original book. The copy ~~shall~~ then ~~have~~ has the force  
3    of the original."

4               **SECTION 7.** G.S. 132-8 is recodified in Chapter 132A of the General Statutes, as  
5    created in Section 1 of this act, as G.S. 132A-8. As recodified by this section, G.S. 132A-8  
6    reads as rewritten:

7    "**§ 132A-8. Assistance by and to Department of Natural and Cultural Resources.**

8       The Department of Natural and Cultural Resources ~~shall have~~ has the right to examine into  
9    the condition of ~~public~~ publicly-owned records and shall give advice and assistance to public  
10   officials ~~in the solution of their problems of preserving, filing and making available regarding~~  
11   the ~~public~~ publicly-owned records in their custody. When requested by the Department of  
12   Natural and Cultural Resources, public officials shall assist the Department in the preparation  
13   of an inclusive inventory of records in their custody, to which shall be attached a schedule,  
14   approved by the head of the governmental unit or agency having custody of the records and the  
15   Secretary of Natural and Cultural Resources, establishing a time period for the retention or  
16   disposal of each series of records. Upon the completion of the inventory and schedule, the  
17   Department of Natural and Cultural Resources shall (subject to the availability of necessary  
18   space, staff, and other facilities for such purposes) make available space in its Records Center  
19   for the filing of semicurrent records so scheduled and in its archives for noncurrent records of  
20   permanent value, and shall render ~~such~~ any other assistance ~~as~~ needed, including the  
21   microfilming of records so scheduled."

22               **SECTION 8.** G.S. 132-8.1 is recodified in Chapter 132A of the General Statutes,  
23    as created in Section 1 of this act, as G.S. 132A-9. As recodified by this section, G.S. 132A-9  
24    reads as rewritten:

1       **"§ 132A-9. Records management program administered by Department of Natural**  
2       **and Cultural Resources; establishment of standards, procedures, etc.; surveys.**

3       A records management program for the application of efficient and economical  
4       management methods to the creation, utilization, maintenance, retention, preservation, and  
5       disposal of ~~official~~publicly-owned records shall be administered by the Department of Natural  
6       and Cultural Resources. It ~~shall be~~is the duty of that Department, in cooperation with and with  
7       the approval of the Department of Administration, to establish standards, procedures, and  
8       techniques for effective management of ~~public~~publicly-owned records, to make continuing  
9       surveys of paper work operations, and to recommend improvements in current records  
10      management practices including the use of space, equipment, and supplies employed in  
11      creating, maintaining, and servicing publicly-owned records. It ~~shall be~~is the duty of the head  
12      of each State agency and the governing body of each county, ~~municipality~~municipality, and  
13      other subdivision of government to cooperate with the Department of Natural and Cultural  
14      Resources in conducting surveys and to establish and maintain an active, continuing program  
15      for the economical and efficient management of the publicly-owned records of ~~said the~~ agency,  
16      county, municipality, or other subdivision of government."

17               **SECTION 9.** G.S. 132-8.2 is recodified in Chapter 132A of the General Statutes,  
18      as created in Section 1 of this act, as G.S. 132A-10. As recodified by this section, G.S. 132A-  
19      10 reads as rewritten:

20      **"§ 132A-10. Selection and preservation of records considered essential; making or**  
21               **designation of preservation duplicates; force and effect of duplicates or copies**  
22               **thereof.**

23               (a) In cooperation with the head of each State agency and the governing body of each  
24      county, municipality, and other subdivision of government, the Department of Natural and



Cultural Resources shall establish and maintain a program for the selection and preservation of ~~public~~publicly-owned records considered essential to the operation of government and to the protection of the rights and interests of persons, and, within the limitations of funds available for the purpose, shall make or cause to be made preservation duplicates or designate as preservation duplicates existing copies of ~~such~~-essential ~~public~~publicly-owned records.

(b) Preservation duplicates shall be durable, accurate, complete and ~~clear, and such~~  
~~duplicates clear. They shall be~~ made by a ~~photographic, photostatic, microfilm, micro-card,~~  
~~miniature photographic, or other process which process that~~ (i) accurately reproduces and  
forms a durable medium for ~~so~~-reproducing the original ~~shall have and~~ (ii) complies with  
approved archival practices established by the Department of Natural and Cultural Resources  
pursuant to G.S. 121-5.

(c) A preservation duplicate that complies with the requirements of subsection (b) of this  
section has the same force and effect for all purposes as the original record whether the original  
record is in existence or not. A transcript, exemplification, or certified copy of ~~such-a~~  
preservation duplicate ~~shall be-is~~ deemed for all purposes to be a transcript, exemplification, or  
certified copy of the original record. ~~Such-preservation~~Preservation duplicates shall be  
preserved in the place and manner of safekeeping prescribed by the Department of Natural and  
Cultural Resources."

**SECTION 10.** This act is effective when it becomes law. This act does not apply  
to any action or proceeding filed before the effective date of this act.